

Applera Corporation and :
 Roche Molecular Systems, Inc., :
 plaintiffs, :
 :
 v. : 3:98cv1201 (JBA)
 :
 MJ Research Inc. and Michael :
 and John Finney, defendants. :

Defendants seek reconsideration of this Court's March 30, 2005 double patenting decision, arguing that this Court's conclusion that Applera did not engage in improper double patenting was in error because (1) the Court failed to consider whether the differences between the instrument patent claims and claim 9 of the '188 patent were obvious; (2) the Court misconstrued the Atwood Declaration; and (3) the Court's finding as to the post cycling temperature step conflicted with its prior claim construction ruling. Each of these arguments was addressed in the Court's prior decision, and defendants have not identified any facts or controlling legal authority that the Court overlooked.

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skilled in the art that opines that any of the asserted claims would have been obvious in view of claim 9 of the '188 patent." Double Patenting Opinion [Doc. # 1296] at 14-15. The Court concluded that the Atwood Declaration could not satisfy MJ's burden of showing that the instrument patent claims were obvious, because it did not "address the specific claims of the '675, '493, and '188 patents," and because there were "important distinctions between the hypothetical PCR protocol addressed in the Atwood Declaration and what is claimed in the '188 patent, and between the machines that Dr. Atwood described as requiring only ordinary skills and the machines claimed in the '675 and '493 patents." Id. at 13. The Court also noted that the jury's finding that defendants had not proved that Dr. Mullis was not the sole inventor of the '675 and '493 patent claims was supported by the evidence, and therefore concluded that MJ's argument that other inventors would had to have been named had the distinctions been non-obvious was without merit. See id. at 15-16.

The Court also addressed in its previous decision MJ's argument that the '675 patent did not require programming for a post-cycling temperature step. See id. at 8-9 n.4 ("MJ argues that in the claim construction, this Court determined that the claim did not require programming for a post-cycling temperature step. This is incorrect. While the Court concluded that 'the

claim does not impose the function of accessing the checkpoint following the subset on the user controllable means,' Claim Construction [Doc. # 715] at 13, the Court found that the 'corresponding structure is a computer programmed to execute the recited function,' id. at 12."); see also Claim Construction at 12 ("The corresponding algorithm is thus: a subset of sequenced heating, cooling and/or temperature maintaining steps in accordance with a PCR protocol where the subset can be cycled a user-defined number of times after which a post-cycling temperature step is accessed.").

Because each of defendants' arguments on reconsideration has previously been considered and has not been shown to be clearly erroneous, defendants do not meet the "strict" reconsideration standard. Shrader v. CSX Transp., Inc., 70 F.3d 255, 257 (2d Cir. 1995). The motion [Doc. # 1312] is accordingly denied.

IT IS SO ORDERED.

/s/

Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut, this 16th day of August, 2005.